Doc Code: AP.PRE.REQ

PRE-APPEAL BRIEF REQUEST FOR REVIEW	Docket Number (Optional) WELCH 4

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on_____ Signature_____ Typed or printed name_____	Application Number 10/785,434	Filed 2/24/2004
	First Named Inventor David Arthur Welch	
	Art Unit 2456	Examiner Richard Keehn

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
   Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒ attorney or agent of record.
Registration number __46566_____

☐ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34. _____

_____/ Brett Bornsen/_____
Signature

_____Brett Bornsen_____
Typed or printed name

_____303-786-7687_____
Telephone number

10-14-2009

_____
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Welch
Application No.: 10/785,434   Art Unit.: 4121
Filed: 2/24/2004   Examiner: Keehn, Richard
For: DISTRIBUTED MONITORING IN A TELECOMMUNICATIONS SYSTEM

Mail Stop AF
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF

Introductory Comments

In response to a final Office action dated July 14, 2009 and pursuant to the Notice of Appeal and the required fee filed concurrently herewith, please consider the following remarks.

Remarks

To paraphrase claim 1, a telecommunication system is disclosed for distributed system monitoring. The system includes peer communication devices that collect performance data responsive to handling telecommunications data, and transfer the performance data to a control system. The control system processes the performance data from each of the peer communication devices to generate a performance file that indicates the performance of each of the peer communication devices. Each of the peer communication devices then processes the performance file to compare its performance to the performance of the other peer communication devices to detect a fault. Responsive to detection of the fault, one (or more) of the peer communication devices processes the performance file to identify a recovery action, and performs the recovery action to attempt to cure the fault.

The Examiner has rejected claims 1, 5-6, 8-11, 15-16, and 18-20 under 35 USC § 103(a) as being obvious in view of U.S. Patent 7,203,655 (Herbert), U.S. Patent Application Publication 2003/0083846 (Curtin), and U.S. Patent Application Publication 2005/0086300 (Yeager). The Applicants submit that these claims are non-obvious in view of this cited art. The Applicants have already put forth arguments regarding claim 1 and the cited art, and direct the Panel to

pages 6-9 of the Response filed to the January 26, 2009 Office action. In addition to those arguments, the Applicants add the following.

Herbert discloses a system for providing performance statistics to agents, such as to agents of a call center. When agents 132 serve calls, an Automatic Call Distributor (ACD) 110 collects performance data for the agents, and sends the performance data for the agents to a central processing computer 120. See FIG. 1 and column 3, lines 60-67. A performance statistics system (PSS) 128 in the central processing computer 120 generates performance reports based on the statistics that are accessible to the agents. See FIG. 1 and page 4, column 10-20. The agents may then view the performance reports. Thus, the overall system in Herbert is to collect performance data for <u>agents</u>, and allow the agents to view performance reports. There is no discussion in Herbert about collecting performance data for communication devices. There is no discussion in Herbert about a communication device processing a performance file to detect a fault, identify a recovery action, and perform the recovery action to attempt to cure the fault. Thus, Herbert is severely deficient as the primary reference in the Examiner's rejection.

The Applicants direct the Panel to pages 4-5 of the Office action dated July 14, 2009. This is where the Examiner attempts to relate Herbert to claim 1. Claim 1 recites the limitations of "a plurality of peer communication devices, where each peer communication device, responsive to handling telecommunications data, collects performance data and transfers the performance data to the control system", and "the control system, responsive to receipt of the performance data from the peer communication devices, processes the performance data from each of the peer communication devices to generate a performance file that indicates the performance of each of the peer communication devices, and transfers the performance file to each of the peer communication devices". In rejecting these limitations of claim 1, the Examiner replaces the language "peer communication devices" from claim 1 with "peer", and tries to relate Herbert to the revised claim 1. For example, on page 4 of the Office action, the Examiner suggests that Herbert teaches "a plurality of peer communication {humans using devices}". The Applicants are not sure what this means, but assume the Examiner is describing the agents in Herbert. Further, the Examiner states that Herbert discloses a control system that "processes the performance data from each of the peer to generate a performance file that indicates the performance of each of the peer, and transfers the performance file to each of the peer". Again, the Applicants are confused by this language. Claim 1 does not refer to a control system that

processes performance data from each of "the peer". Claim 1 specifically recites "the control system, responsive to receipt of the performance data *from the peer communication devices*, processes the performance data from each of the peer communication devices to generate a performance file *that indicates the performance of each of the peer communication devices*, and transfers the performance file *to each of the peer communication devices*". The performance data generated in Herbert does not indicate the performance of *peer communication devices*, but instead indicates the performance of the agents. The Applicants concede that Herbert describes generating performance statistics indicating the performance of agents. However, claim 1 specifically recites generating a performance file that indicates the performance of peer communication devices.

The Examiner's rejection hinges on the system of Herbert collecting performance data for "peers". The Examiner then combines Herbert with Curtin and Yeager, as these references disclose communication devices. The Examiner's rationale is then essentially that the "peers" in Herbert could be replaced with the "communication devices" of Curtin and Yeager. However, Herbert also discloses communication devices, which are the work stations 130 used by the agents. See FIG. 1. And, Herbert never discusses collecting performance data for the work stations. If Herbert discloses communication devices (i.e., work stations) but does not disclose collecting performance data for the communication devices, then why would one skilled in the art be motivated to combine Curtin and Yeager with Herbert so that the system in Herbert collects performance data for the communication devices? The problem with the Examiner's argument is that Herbert never describes collecting performance data for communication devices, and only describes performance data for agents. Thus, there would be no motivation to collect the performance data of the communication devices of Curtin and Yeager. As such, the Applicants submit that the Examiner has not properly rejected these limitations of claim 1.

Even if the Panel agrees that the combination of Herbert, Curtin, and Yeager teach the limitations discussed above, the Applicants submit that they do not teach the remaining limitations of claim 1. More particularly, claim 1 recites "each of the peer communication devices, responsive to receipt of the performance file, processes the performance file to compare its performance to the performance of the other peer communication devices to detect a fault". In rejecting this limitation, the Examiner has again removed the term "communication device". See page 5 of the Office action. And, the Examiner suggests that when an agent configures the

display of the performance statistics, he/she is comparing their performance to a group to *detect a fault*. There is no language such as this in Herbert regarding an agent detecting a fault. The Examiner may be guessing as to the thoughts of the agent when the agent is reviewing the performance statistics (i.e., that they are trying to detect their faults). However, the Applicants submit that this is insufficient for a rejection. Herbert does not disclose a *communication device* detecting a fault based on the performance file. And, one can only assume what an agent would do when viewing the performance statistics. Thus, the Examiner has not properly rejected this limitation.

Even further, claim 1 recites "responsive to detection of the fault, at least one of the peer communication devices processes the performance file to identify at least one recovery action, and performs the at least one recovery action to attempt to cure the fault". In rejecting this limitation, the Examiner has again removed the term "communication device". See page 5 of the Office action. And, the Examiner cites to column 6, lines 25-35 in Herbert, which discusses a manager being able to configure performance statistics as color coded. Thus, if the performance of an agent is below a threshold, then the performance statistics are in one color. If the performance of an agent is above a threshold, then the performance statistics are in another color. The Applicants submit to the Panel that color coding performance thresholds of agent in Herbert does not teach identifying a recovery action in a communication device, and performing the recovery action to attempt to cure a detected fault in the communication device. Thus, the Examiner has not properly rejected this limitation.

The Applicants point out to the Panel that one advantage of the system in claim 1 is that the peer communication devices can detect their own internal fault, and initiate a recovery action. The control system does not have to initiate the recovery action on behalf of the peer communication devices. Herbert does not teach this, nor does the combination of Herbert, Curtin, and Yeager. Herbert merely describes that agents can view their performance statistics. Curtin mentions that communication devices may collect performance data, and Yeager mentions that peer devices may communicate. The Applicants ask the Panel to recognize that even when combined, these references do not teach distributed monitoring by having peer communication devices detect faults based on a performance file, and initiate recovery actions to cure the faults.

Conclusion

The Applicants have shown to the Panel that the Examiner has failed to show how the cited art renders claim 1 obvious. Similar arguments apply to the other claims. The Applicants ask the Panel to find the present rejection insufficient, and allow the pending claims for at least the reasons provided above.

Respectfully submitted,

Date: **10-14-2009**   **/BRETT BORNSEN/**

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